

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR.

Date of Decision: 12/11/2002

OA 251/96

Gurbax Dadlani s/o Shri Tannumal Dadlani r/o 20/340,
Jhula Mohalala, Diggi Bazar, Ajmer.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Communication, Deptt. of Telecom, New Delhi.
2. Chief General Manager, Telecommunications, O/o GMTD, Circle Office, Jaipur.
3. ✓ Director Telecommunication (South), Udaipur.
4. Telecommunication District Manager, O/o TDM, Ajmer.

... Respondents

CORAM:

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

HON'BLE MR.J.K.KAUSHIK, JUDL.MEMBER

For the Applicant

... Mr.P.D.Khanna

For the Respondents

... Mr.Bhanwar Bagri

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

The applicant is a retired Telegraph Master and he was last posted in the Central Telegraph Office, Ajmer. He retired voluntarily on 3.7.94. He was initially appointed on 28.5.64 as a Telegraphist. A scheme of Biennial Cadre Review (BCR, for short) was introduced in the year 1990, under which the category of the applicant was also covered. Under this scheme, first time bound promotion is given after 16 years of service and second promotion becomes due after 26 years of service. The applicant's grouse is that despite his having completed 26 years of service on 28.5.90 he has not been granted second promotion, which was given to his juniors in the cadre on 30.11.90. Some further promotions were ordered in the year 1994 but again his claim was ignored. He submitted representations dated 20.12.94 and 24.1.95



requesting for his upgradation under BCR Scheme. Vide letter dated 2.3.95 (Ann.A/1) he was informed that his case was examined and it was found that the DPC did not consider him fit because of unsatisfactory record of service. Being aggrieved with this order, he has filed this OA with a prayer that the impugned communication dated 2.3.95 (Ann.A/1) be declared illegal and set aside and that respondents be directed to grant him second time bound promotion under BCR Scheme w.e.f. 30.11.90, when his juniors were allowed the benefit, or in the alternative from 1.6.94, when he was allowed to cross efficiency bar.

2. The facts, as brought out by the applicant himself, are that disciplinary proceedings were initiated against him. A penalty of stoppage of increment for three years without cumulative effect was imposed upon him in the year 1990 and it was made effective on 1.6.91. The duration of penalty came to an end on 30.5.94. He has further stated that he was allowed to cross efficiency bar vide letter dated 8.6.94 and that orders clearly stated that his over all work and conduct were found satisfactory. The applicant submits that in face of this letter there was no reason for not promoting him w.e.f. 1.6.94, if not from the year 1990.

3. We have perused the reply filed by the respondents and have also heard the learned counsel for the parties.

4. In so far as claim of the applicant w.e.f. the year 1990, the same is hopelessly barred by limitation. This OA has been filed only in the year 1996. The applicant has stated that when he was not promoted in the year 1990, he submitted a representation to the Director, Telecom (South), Udaipur, vide letter dated 7.9.92, and followed it up with further representations dated 15.3.94 and 2.8.94. He received a reply on 12.12.94 and further protested

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against the action of the respondents vide letter dated 20.12.94. This ~~only~~ in fact was the ^{final} reply of the respondents vide letter dated 2.3.95. In view of this, the applicant claims that his application is within time.

5. We have perused the records carefully and we find that the only representation available on record seeking second time bound promotion is dated 20.12.94, filed as Ann.A/13. This does not make any mention of any earlier representation submitted by him regarding his promotion from the year 1990. In fact, the applicant has acknowledged the fact that he was awarded a penalty of stoppage of future increments for a period of three years without cumulative effect. In this representation he has sought promotion w.e.f. 1.6.94 by stating that the penalty period expired on 31.5.94. So, there is no substance in his case that he has been representing against his non-promotion from the year 1990 and to that extent this claim is barred by limitation.

6. Now coming to the prayer of the applicant that he should have been promoted w.e.f. 1.6.94, we find the reason for his non-promotion has been clearly stated in the impugned letter dated 2.3.95. The learned counsel for the applicant assailed this order for the reason that the applicant had been permitted to cross efficiency bar by order dated 8.6.94, wherein his over all work and conduct had been declared as satisfactory. The learned counsel contended that since his work has been assessed as satisfactory, the promotion cannot be refused. While placing reliance on the case of Brij Nath Pandey v. State of U.P. & Ors., 2001 SC-SLR 760, decided on 31.7.2000, he stressed that as per the guidelines laid down by Hon'ble the Supreme Court, the adverse remarks in the year 1990 cannot come in the way of the applicant's



promotion since subsequent to adverse remarks he was allowed to cross efficiency bar. He also referred to the judgement of this Bench of the Tribunal dated 13.2.2001 in OA 5/96, where the applicant was directed to be granted the benefit under BCR Scheme w.e.f. 1.10.91 on the ground that on that date the applicant was not suffering any penalty. The charge-sheet was issued to the applicant subsequently. The learned counsel also drew support from judgement of the Apex Court in the case of Badrinath v. Government of Tamil Nadu & Ors., 2000 SC-SLR 6.

7. We have considered the rival contentions very carefully. The law laid down in the case of 'Badrinath' has no applicability in the instant case as the same is clearly distinguishable on facts. V.C. Tahiliani's case (OA 5/96) also is of no help to the applicant in view of what we have observed above that the claim of promotion w.e.f. 30.11.90 is barred by time. However, we find the ratio of the judgement in the case of 'Brij Nath Pandey' is clearly applicable in this case. In that case, Hon'ble the Supreme Court had observed as under :

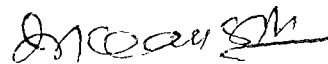
"In our view this contention of the appellant is correct and the adverse entries in 1985-86 and 1986-87 cannot come in the way of the appellant for further promotion once he was allowed to cross the efficiency bar on 20.5.1992."

and the respondents were directed to consider the case of the appellant afresh. In the case before us also, the facts are similar inasmuch as the adverse remarks were recorded in the ACR of the applicant for the year 1991. The applicant was allowed to cross the efficiency bar w.e.f. 1.6.94. In view of the law laid down by the Apex Court in the case of 'Brij Nath Pandey' (quoted supra) these adverse entries cannot come in the way of applicant's promotion as he has



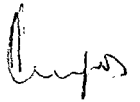
been allowed to cross the efficiency bar on 1.6.94. The applicant retired voluntarily on 3.7.94. As on 1.6.94 admittedly he had completed more than 26 years of service and the period of penalty was also over, he thus become entitled to be granted the benefit of second promotion under BCR Scheme.

8. We, therefore, allow this OA and direct the respondents to reconsider the case of applicant's promotion under BCR Scheme w.e.f. 1.6.94. The applicant shall be allowed all benefits of pay and allowances of the higher grade w.e.f. 1.6.94 to the date of his retirement. His pensionary benefits shall also be revised accordingly. The respondents shall comply with these orders within a period of four months from the date of communication of this order. No costs.



(J.K.KAUSHIK)

MEMBER (J)



(A.P.NAGRATH)

MEMBER (A)